

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FIDELITY MANAGEMENT TRUST
COMPANY, as Collateral Agent for
Mellon Bank, N.A., as Trustee of Bell
Atlantic Master Trust with Respect to
to Account C,

Plaintiff,

v.

RICCARDO OLIVIERI, an individual,
Defendant.

Civil Action No. 04-CV-
11873-NMG

MOTION OF DEFENDANT RICCARDO OLIVIERI
TO TRANSFER VENUE

Pursuant to 28 U.S.C. §§ 1404(a) and 1412, Defendant Riccardo Olivieri moves that this Court transfer the venue of this matter to the United States District Court for the Southern District of Florida for the convenience of the parties, the witnesses and in the interests of justice. In support hereof, Mr. Olivieri states as follows, and in addition submits his Memorandum of Law filed contemporaneously herewith.

Plaintiff Fidelity Management Trust Company ("Fidelity") serves as the Collateral Agent for Bankers Trust Company, predecessor in interest to Mellon Bank, N.A., as Trustee of the GTE Service Corporation Plan for Employees' Pension Trust with respect to Account No. 176230, n/k/a the Bell Atlantic Master Trust ("Creditor"). In this action, Fidelity seeks to enforce on behalf of the Creditor a \$14,500,000 Guaranty ("Guaranty") against Mr. Olivieri. The Guaranty was intended to enable Florida Development Associates, Ltd., a company owned by Mr. Olivieri, to secure a \$14,500,000 loan ("Loan") with which to purchase land and develop a real estate project

known as Bentley Bay Towers in Miami, Florida ("Project"). As hereafter described, Florida Development Associates, Ltd. filed a petition for relief under Chapter 11 of the Bankruptcy Code, and is hereafter referred to as "Debtor".

Except for the Collateral Agent's being located in Massachusetts, neither of the parties nor the transaction at issue has any connection or relation to Massachusetts. The Debtor is a Florida limited partnership, and both its general and limited partners are also Florida companies. Furthermore, The Debtor's sole general partner, Bentley Bay G.P. Corp. ("Bentley Bay"), is a Florida corporation. Similarly, the sole limited partner of the Debtor, Development Investors, LLC, is a Florida limited liability company.

The Creditor is Bell Atlantic Master Trust with Respect to Account C, which is also not a Massachusetts corporation. Mr. Olivieri is an Italian citizen and resident of Miami, Florida.

The transaction itself was undertaken to satisfy certain equity requirements regarding the development of the Property. The Property is located in Florida. The documents underlying the transaction were not executed or delivered in Massachusetts. The moneys advanced under the agreement to finance ("Agreement") were not paid in Massachusetts. The primary negotiations in this transaction occurred in Florida and not in Massachusetts. The Property and Project and all security provided under the Agreement and the related note that was executed ("Note") are located in Florida. All monies provided pursuant to the Agreement were to be used for the Property and Project in Florida. The closing of the transaction occurred in Miami, Florida.

The Loan, upon which the Guaranty is based, is already the subject of litigation between the Debtor and the Creditor in Florida. That litigation raises the very issues

asserted in the complaint in this case.

Prior to the commencement of Fidelity's action against Mr. Olivieri, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Southern District of Florida (the "Bankruptcy Case"). On July 20, 2004, prior to service of Fidelity's complaint, the Debtor initiated in the Bankruptcy Case an adversary proceeding against the Creditor ("Adversary Proceeding") challenging the validity of the Loan and the purported debt owed thereon on various grounds. Among other challenges, the Debtor alleges that the Loan calls for a rate of interest that exceeds that which is allowed under Florida's usury laws and thus is unenforceable; that the Loan should be recharacterized as an equity investment from the Creditor and thus is unenforceable; and that the Creditor breached its fiduciary duty to the Debtor by seizing control of the Project and mismanaging it to the Debtor's detriment.

Mr. Olivieri has moved to intervene in the Adversary Proceeding against the Creditor in order to challenge the Guaranty and the Loan based upon, in part, the same arguments raised by the Debtor against the Creditor. Specifically, he alleges in his proposed claims against the Creditor and Fidelity that the Loan calls for a rate of interest that exceeds that which is allowed under Florida's usury laws and thus is unenforceable; that the Loan should be recharacterized as an equity investment from the Creditor and thus is unenforceable; that the Creditor and its Collateral Agent Fidelity breached their duty to preserve the value of the Debtor by seizing control of the Debtor and the Project and mismanaging them to Mr. Olivieri's detriment; and that the Creditor and its Collateral Agent Fidelity breached their fiduciary duty to Mr. Olivieri by again seizing

control of the Debtor and the Project and mismanaging them to his detriment.

Further, if this action were to proceed separately in Massachusetts, Mr. Olivieri will raise these same arguments again in defense of the claims brought by the Creditor through its Collateral Agent Fidelity here.

This Court should transfer this action to the Bankruptcy Court for the Southern District of Florida, where the Debtor and the Creditor are already litigating the loan upon which the Guaranty at issue in this case is based.

Based upon the foregoing, this Court should transfer venue of this matter to the United States District Court for the Southern District of Florida.

RICCARDO OLIVIERI

By his attorneys,

/s/ Richard L. Levine

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November 18, 2004

DEFENDANT OLIVIERI'S LIST OF KEY FLORIDA WITNESSES

The following comprises a list of some of the key witnesses having information relevant to Mr. Olivieri's defense in the above-styled action who reside in Florida and for whom Florida would be the more convenient forum for this action:

1. **Bernard Siegal.** Vice President and Chief Financial Officer of the Debtor.
2. **Michael Fraser.** Executive Vice President/Sales and Marketing of The Bentley Group.
3. **Andrew Marshall.** Previous owner and representative of *The Bentley Group*.
4. **Rene Diaz de Villegas.** President of the Project's previous general contractor, Keystone Construction Group.
5. **Carlos Martinez.** Previous loan officer for the Project at Colonial Bank, Miami.
6. **Wellbro Management, Inc.** Fidelity's inspector at the Project.
7. **Colonial Bank.** Primary lender to the Debtor.
8. **Rolando Diaz.** Agent of Colonial Bank responsible for overseeing the Project.
9. **Miller Solomon.** Current general contractor of the Project.
10. **Congress Group.** Owner on-site representative at Project.